Criminal Law of India page 28 (14th edition, that of 1914) it is stated that:

"A heavy fine ought not to be imposed on the supposition that the accused has wealthy allies."

The reference given for this statement is Ratanlal 556. But in the latest edition of Ratanlal (12th edition of 1930) this opinion is omitted from the place which it previously occupied.

The matter is not free from difficulty. The usual rule is that fines must be measured by the means of the offender and the nature of the offence. The authority for it is given as 7 W.R. (India) Criminal Rulings page 37 which page is missing from the copy of volume 7 in our Library. It is clear anyhow that there may be, as there is here, a case where the means of the offender are trivial and the nature of the offence is serious. In such cases I agree with the D.P.P. that a fine commensurate with the nature of the offence must be given, whether the offender can pay it or not. But it must not be inflicted with any eye on the existence of a gang of wealthy allies. It is given because the nature of the offence demands it.

Upon the whole I am of opinion that the sentences are not unreasonable.

I dismiss the appeals and confirm the convictions and sentences.

Appeal dismissed. Convictions & Sentences Confirmed.

Solicitor for Ong Chwee Hoh—*S. Fung.*

Solicitors for Ng Geok Seng—
Battenberg & Talma.

[APPELLATE CRIMINAL JURISDICTION.]

THE KING vs. TARA SINGH.

[SINGAPORE THIRD ASSIZE CASE No. 23 OF 1931.]

Murder—Arrest by person not a policeman —Confession to such person before police arrive —admissibility.

A police officer investigating the murder of one Sunder Singh told a gathering of Sikhs to arrest the accused if they saw him. A Public Works Department Watchman saw the accused and arrested him, detaining him while another person went for the police. Before the police arrived accused without threat or inducement said to the watchman "I have killed Sunder Singh myself. I have killed two more. Let me go."

Held: the evidence of this statement was rightly admitted.

The trial Judge reserved the following Case:—

"The accused was tried and convicted of the murder of one Sunder Singh at the Rangoon Road School on the morning of the 9th April 1931. He was arrested by one Tirlok Singh, who was not a Police Officer, in Bukit Timah Road on the morning of the 14th April. Tirlok Singh had been riding on a P.W.D. lorry with one Ganga Singh, and Tirlok Singh sat with the accused on a culvert holding him by the arm while Ganga Singh went to Wayang Satu Police Station to fetch the police who subsequently arrested and hand-cuffed the accused.

"2. The Crown tendered as evidence, a statement or confession alleged to have been made by the accused to Tirlok Singh while they were waiting for the Police to come up. The confession, which was denied by the accused, was in the following words: 'I have killed Sunder Singh myself. I have to kill two more. Let me go.' This evidence when tendered by the Crown was objected to by Counsel for the defence and I had argument in chambers on the subject on several occasions. When the evidence was tendered in Court, it was formally objected to but I held that the evidence was admissible.

"3. The chief ground of objection by the accused's counsel was that Inspector Judge, a Sikh Police Inspector, had told a gathering of Sikhs on the morning of the 9th April to arrest Tara Singh. Tirlok Singh and Ganga Singh were amongst those whom he addressed but he did not address them in particular and did not even know their names. It was suggested that Tirlok was an agent of the Police and therefore was in the same position as that of a Police Officer for the purpose of Section 26 of the Evidence Ordinance. In support of his argument Mr. Stuart, accused's counsel, cited Indian authorities to the effect that a person arrested under the instructions of the Police is considered to be in Police custody and therefore that the section requiring an accused person to be brought before the Police Court within 24 hours of his arrest covered the period during which such person is under arrest on instructions of the Police. See Section 35 of the Criminal Procedure Code.

"4. I came to the conclusion that although the accused might have been considered in Police custody for the purpose of Section 35 of the Criminal Procedure Code, his confession was not made to a Police Officer within the meaning of Section 25 of the Evidence Ordinance, nor 'whilst he is in the custody of a Police Officer' under Section 26 of the Evidence Ordinance. It was also clear both from the evidence of Tirlok Singh and that of the accused himself that the confession was not caused by any inducement, threat or promise proceeding from the person in authority within the meaning of Section 24 of the Evidence Ordinance. I was of opinion that Tirlok Singh was a 'person in authority' within

the meaning of the Section and that if there had been evidence of inducement, threat or promise, it would have made the confession irrelevant, but no such inducement, threat or promise was alleged or proved. It also appeared to me that Sections 25 and 26 of the Evidence Ordinance are aimed at protecting an accused person from any undue influence from a member of the Police Force and accordingly that a civilian who effected an arrest is not a person against whom an accused person required protection unless he was a 'person in authority' using undue influence.

"5. In charging the jury I warned them (1) that there was a conflict of evidence as to the confession and that the only evidence of confession was the uncorroborated statement of a witness who was probably unfavourable to the accused, and (2) that the words used might be merely words of bravado and might not really mean that the accused admitted the offence. I cannot, however, say that the admission of this evidence did not influence the jury in arriving at their verdict.

"6. On the conviction of the accused sentence of death was passed, but on the application of the accused's counsel I agreed to reserve the question of the admissibility of the confession for the Supreme Court and directed that the convict should be remanded to prison pending the decision of the Supreme Court under Section 312 (2) of the Criminal Procedure Code."

Stuart for the Accused.

Inspector Judge authorised Tirlok Singh to arrest accused. Tirlok Singh was in a position of authority. Accused was in police custody and confession should have been excluded.

McElwaine, D.P.P. for the Crown was not called upon.

The judgment of the Court was delivered by

SPROULE, AG. C.J.—Tirlok Singh was not a policeman and accused was not in the custody of a police officer when he made his confession. The evidence of the confession to Tirlok Singh was rightly admitted.

It was questionable whether the trial judge was right in saying that Tirlok Singh was a person in authority, but as it was clear that no inducement had been made by Tirlok Singh to Tara Singh to confess it was unnecessary to discuss this point.

Note.—Mr. Ameer Ali in his notes to section 26 of the Indian Evidence Act points out that an excise inspector is not a policeman. In *Empress* v. *Tatye bin Appaji*, I.L.R. 20 Bom. 795, a confession to a keeper of a jail was held to be admissible.
See too *Harbhayan* v. *Emp.*, I.L.R. 54 Cal. 601.

[CRIMINAL REVISIONAL JURISDICTION]

REX v. NADAISON

[POLICE CASE No. 5700 OF 1932.]

[CRIMINAL REVISION No. 5 OF 1932]

Abetment of attempt to cheat—Police Supervision—Cr. P.C. sections 12 (4), 178 (m) (iii): 109, 420, 511.

When a case is remitted by a Police Court to the District Court for sentence under Section 178 (m) (iii) of the Cr. P.C. the District Judge may in addition to ordering Police Supervision impose the same sentence as he could have imposed had he tried the case himself.

Abetment of an attempt to cheat should be charged under Section 116 and Sections 417 or 420 of the Penal Code.

The facts sufficiently appear from the judgment. Two persons were convicted. As the other man (Tan Choon Hong) was sentenced to a fine of $30 by the Police Magistrate this revision was not concerned with his case.

McElwaine, D.P.P. asked for revision of the sentence on Nadaison.

When a case is transferred under Section 178 (m) (iii) the District Judge cannot award greater substantive punishment than the convicting magistrate could impose. Transfer is solely for the purpose of allowing the District Judge to impose Supervision which the convicting magistrate had no power to order.

Other sections provide for transfer of serious cases for trial in District Court.

When sections 109 and 511 Penal Code are combined in a charge the charge is really under 116.

The charge is therefore under 116 and 420 and maximum punishment is one quarter of seven years. Accused was therefore not liable to supervision under Section 12 (4) Cr. P.C. and Section 178 (m) (iii) does not apply.

Cur. Ad. Vult.

5—11—1932.

TERRELL, J.—This matter came before the Court by way of revision under Section 312A of the Criminal Procedure Code at the instance of the D.P.P.

The accused was tried together with one Tang Choon Hong who was charged with attempted cheating under Sections 511 and 420 of the Penal Code and convicted. Tang Choon Hong was sentenced to six months' R.I. The accused was charged with abetting under Section 109 of the Penal Code the offence charged against Tang Choon Hong.

There were also additional charges against both accused under rules 7 and 8 of the Municipal Water Supply By-laws (Gazette Notification No. 542 of 1928) but as the offence both under the Penal Code and under the Municipal By-laws was really the same the accused could not in view of Section 71 of the Penal Code be punished